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## VIA FACSIMILE AND OVERNIGHT MAIL

Ms. Rebecca Kane  
U.S. EPA  
Office of Enforcement and Compliance Assurance  
MC 2222A  
1200 Pennsylvania Avenue NW  
Washington D.C. 20460

RE: Comments on U.S. EPA's Enforcement and Compliance History Online Web Site

Dear Ms. Kane:

Frost Brown Todd LLC ("FBT") represents AK Steel Corporation ("AK Steel"), a large integrated steel manufacturer with numerous facilities located across the nation. FBT is submitting these comments regarding U.S. EPA's Enforcement and Compliance History Online ("ECHO") web site on behalf of AK Steel.

Pursuant to the *Notice of Availability of Enforcement and Compliance History Online Web Site for 60-Day Comment Period*, U.S. EPA sought comments on the usability of the ECHO site, as well as the accuracy of the data, by January 31, 2003. 67 Fed. Reg. 70079 (November 20, 2002). U.S. EPA thereafter extended the deadline for commenting to March 31, 2003. 68 Fed. Reg. 4777 (January 30, 2003).

U.S. EPA requested comments on several specific questions, including whether the ECHO site provided meaningful and useful information about the compliance and enforcement program, and whether the facility reports were accurate. After reviewing the ECHO database reports for each of AK Steel's facilities, as well as for facilities for numerous other clients of varying size and from different industrial and commercial sectors, FBT believes that U.S. EPA's ECHO database falls far short of providing meaningful and useful information, and more often than not provides inaccurate and incorrect information. In general, FBT believes that U.S. EPA should withdraw the ECHO database program, unless and until the Agency is able to correct its numerous deficiencies. Specific comments on the ECHO database's deficiencies with regard to AK Steel are set forth below.

### **1. The Quality and Completeness of the Data in the ECHO Database is Consistently Poor.**

The ECHO web site indicates U.S. EPA underwent an extensive data quality review prior to implementing the database. However, U.S. EPA's emphasis seems to have been on data

transfer, not the quality of the actual raw data. In actuality, U.S. EPA has largely failed in both regards. As detailed below, both the quality of U.S. EPA's raw data, as well as U.S. EPA's transfer of that data from state systems to the ECHO database, is fraught with errors.

A review of the ECHO database entries for AK Steel's various facilities identified numerous errors. For instance, of the seven AK Steel major operating facilities identified on U.S. EPA's ECHO database, only the database report for one facility contains no errors. The ECHO database reports for the remaining six of AK Steel's major operating facilities contain at least 50 errors. Additionally, AK Steel's Rockport Works has been in operation for only four years, yet the ECHO database report for this facility contains at least eight different errors. Possibly the most striking example of the lack of data quality in the ECHO database for AK Steel is the fact that the database notes that AK Steel's Hamilton Plant is a "major operating" facility under the Clean Air Act. However, that facility was completely decommissioned and demolished by 1995, and is currently nothing more than a grass field.

Many of the errors in U.S. EPA's ECHO database involve circumstances where the Agency has listed violations that never occurred. For instance, AK Steel's Zanesville Works is identified as having a 4% pH exceedance of its NPDES permit limits. This discharge did occur, but it fell within the one hour permitted excursion clause of the permit, and was therefore not a violation. As another example, AK Steel's Middletown Works is identified as having four different zinc exceedances of its NPDES permit limits during the past eight quarter reporting period. AK Steel has reviewed the applicable discharge monitoring reports and has no record of ever having exceeded its zinc limits during this period. This same facility is identified as having a NESHAP Benzene violation within the last eight quarter reporting period. Again, the company has no record of such an occurrence. Similarly, AK Steel's Butler Works Main Plant is shown to have a pH exceedance of its NPDES permit limit. Yet, AK Steel has no record of such an exceedance.

U.S. EPA's ECHO database also incorrectly identifies AK Steel as the facility owner of several facilities where either the entire facility, or the major operational portions of the facility, were sold long ago to third parties with no relationship to AK Steel. Examples include AK Steel's former Wheatland, Pennsylvania facility, AK Steel's former Dover, Ohio facility, and part of AK Steel's former Kansas City facility. AK Steel should not continue to be listed as owning sites having environmental permits over which it no longer has any control.

The foregoing is just a very limited sampling of the data quality issues FBT and AK Steel have identified with the ECHO database. Additional errors cover a wide-range, from misidentified facility names, conflicting and duplicative permit numbers, incorrect notations of alleged violations, and incorrect noting of the length of the alleged violation. In total, AK Steel has identified over 75 errors that must be corrected. FBT, on behalf of AK Steel, is utilizing U.S. EPA's suggested approach for correcting these data mistakes over the internet. However, based on this review of AK Steel and a cross section of both large, medium and small businesses,

it is readily apparent that U.S. EPA's ECHO database has serious across-the-board data quality problems. Even with a commitment of substantial resources, it would likely be an impossible task for U.S. EPA to achieve the level of quality necessary for the database to have any acceptable value. Even if U.S. EPA undertook such a task to improve the data quality, it is highly questionable whether the commitment of such substantial resources (*i.e.* the taxpayer's money) would justify the result. And, even if U.S. EPA could correct all of the existing errors in its ECHO database, keeping that database current would be a daunting and virtually impossible task.

Finally, the overall premise of maintaining data quality on the ECHO database seems to be that each facility is responsible for policing the information contained in the database and submitting identified errors to the Agency. It is likely that the submission of an identified error to U.S. EPA will not result in the immediate correction of the erroneous entry, and the regulated community will be forced into ongoing disputes with U.S. EPA on what should and should not be listed in the ECHO database. This clearly adds an unnecessary new burden on the regulated community. Moreover, the burden of maintaining the data quality of information compiled and distributed to the public by the Agency rests *solely* with the distributing agency, not the regulated community. *See* Federal Data Quality Act, Public Law 106-554 Section 515; *see also* EPA's Data Quality Guidelines, 67 Fed. Reg. 63657 (October 15, 2002) (Notice of Availability of the Guidelines). As such, the procedures that U.S. EPA has adopted for correcting errors on its ECHO database, *i.e.*, requiring the *regulated community* to initiate and negotiate the correction of those errors, is unlawful, arbitrary, and capricious.

The numerous errors contained within the ECHO database also constitute a clear violation of the Federal Data Quality Act, Public Law 106-554 Section 515, and U.S. EPA's own implementing guidelines. (the "Guidelines")<sup>1</sup>. Pursuant to these Guidelines, information disseminated to the public, such as that contained within the ECHO database, must undergo a pre-dissemination review to ensure the information adheres to "basic standards of quality, including objectivity, utility, and integrity." Guidelines at 3. Moreover, the Guidelines require that in situations where U.S. EPA's information is obtained from external sources such as States and other governments, U.S. EPA must "take steps to ensure that the quality and transparency of information provided by external sources are sufficient for the intended use." Guidelines at 28. Without question, given the enormous number of significant and obvious errors present in the database, U.S. EPA has failed to satisfy the dictates of the Federal Data Quality Act and the Agency's own Guidelines on both counts. Simply put, if U.S. EPA is unable to ensure a reliable, accurate and current database, it should not create that database in the first instance.

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<sup>1</sup> U.S. EPA Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency. 67 Fed. Reg. 63657 (October 15, 2002) (Notice of Availability of the Guidelines).

**2. Minor, Insignificant Violations Should Not Be Included In the ECHO Database.**

The ECHO database indicates that informal actions are not included in the database and that “[v]iolations that are minor, short in duration, or quickly corrected,” which did not warrant “formal” enforcement action, are not listed. However, the database is nonetheless replete with these very minor alleged violations. For example, there are numerous instances where a one time, minor alleged violation such as a missing drum label or a minor paperwork issue was immediately addressed by the alleged violator at the time of inspection. Yet, these minor discrepancies show up in the ECHO database as a violation. For instance, AK Steel’s Middletown Works is incorrectly identified as having been out of compliance with RCRA for the last eight quarters and identifies the date of noncompliance as March 3, 1998. The only “noncompliance” that occurred on that date was the discovery of a missing drum label that was replaced on the same date of discovery.

Because the ECHO database does not include the factual detail behind the listed alleged violation, a third party reviewing the database is unable to distinguish between such minor discrepancies and truly serious violations. Thus, under the above example, the missing drum label or paperwork discrepancy is treated by the ECHO database, and is viewed by third parties, as having the same severity as a more serious violation, such as ruptured drums releasing hazardous waste to the environment.

Similarly, if U.S. EPA intends to continue to post its ECHO database, the Agency needs to set specific parameters for when a “formal” action has been taken such that it warrants listing in the database. At present, the database appears to list everything from possible discrepancies discussed during an inspection that never resulted in the issuance of a Notice of Violation (“NOV”), to formal judicial enforcement actions. The more valuable and appropriate approach would be to include only confirmed violations of significant importance. Confirmed violations would include only those instances where the facility admits the violation exists or where a final judgment has been entered by the appropriate tribunal and all appeals have been exhausted. To be of real value, the database should only list those instances where formal administrative, civil, or criminal enforcement actions were taken.

**3. The Database Improperly Reports Violations.**

U.S. EPA has apparently taken a very broad approach in determining what constitutes a violation for purposes of the ECHO database. For example, in several instances a violation is noted where a Notice of Violation may have initially been issued by the Agency but, upon receiving the facility’s response to the NOV, the Agency agreed that no violation occurred, and no further action was taken. For example, AK Steel’s Zanesville Works is identified as having an alleged Oil & Grease loading violation. Although an NOV was initially issued with regard to this alleged violation, upon AK Steel’s explaining to the Ohio EPA that the Oil and Grease

concentration was actually below the Practical Quantification Limit ("PQL"), and was therefore in compliance pursuant to the Ohio Revised Code, Ohio EPA agreed that there was no violation. Yet, the ECHO database still incorrectly reflects a violation. In such circumstances, since the alleged activity was not a violation, it never should have been denoted as such, and it should not now appear as a violation in the ECHO database.

Furthermore, in many instances, the database identifies a facility as being in violation, and in some instances identifies the facility as a "serious violator," based solely on Agency allegations that the facility is challenging on various legal and factual grounds. For example, the database identifies AK Steel's Middletown Works as being in violation of SIP requirements since the first quarter of 2001. AK Steel strongly disagrees with the Agency on this issue, and has been aggressively defending itself against these allegations in cases currently pending in both state and federal court. The Agency's unequivocal and unilateral classification and representation to the public of a particular condition as a "violation," when it has knowledge of the facility's ongoing defense, is inappropriate and misleading. Until final resolution is reached on an alleged violation that is being challenged, either through an agreement by the parties or by a decision by an administrative tribunal or court of law, the ECHO database should not include the alleged violation.

Additionally, in some instances, the ECHO database identifies a facility as being out of compliance for one or more quarters when, in fact, a minor alleged "violation" was corrected immediately following the inspection, but the inspecting agency never acknowledged the correction until the following quarter. For example, AK Steel's Middletown Works is identified as being out of compliance with RCRA for two quarters for a minor paperwork discrepancy involving an employee being incorrectly identified in a contingency plan. The employee had been transferred to another facility, but the plan had not been revised to reflect this. The discrepancy was immediately corrected upon discovery, but the Agency did not acknowledge the correction until the following quarter. Beyond the fact that such a minor paperwork discrepancy should not be included the database in the first instance, it is inappropriate to continue to label a facility as being in violation, beyond the date the alleged violation was corrected.

Finally, there are items listed in the ECHO database as violations which have been voluntarily dropped or dismissed by the Agency. For instance, the database identifies that a RCRA § 7003 order has been issued to AK Steel's Middletown Works. This order was withdrawn by U.S. EPA several months ago, and the United States has even dismissed, with prejudice, its claim in federal district court alleging that AK Steel had violated this order. Therefore any reference to this order should be removed from the database.

Based on the foregoing, it should be apparent to U.S. EPA that its ECHO database is significantly lacking in both data quality and defined parameters on the substance of the database. These deficiencies are not trivial, but instead could have significant impacts on the Agency and the regulated community for numerous reasons. First, the ECHO database misleads

the public. This could easily result in the filing of baseless 60-day citizen suit notice letters, requiring responses by state and federal agencies, and the corresponding use of scarce resources. Second, the ECHO database creates unnecessary and unwarranted fears and concerns by the public, by overstating or incorrectly stating violations. Third, it is likely that environmental activists will use this inaccurate and/or misleading data to mislead the public and serve their own private agendas. Finally, inaccurate entries in U.S. EPA's ECHO database impugn the reputation of companies that are in compliance, resulting in a negative effect on public perceptions and customer, employee and shareholder relations. This could all lead to a company losing significant business and diminished reputation, exposing U.S. EPA to liability for the dissemination of the inaccurate and misleading data. Simply stated, the ECHO database does not serve its intended purpose and it is inaccurate and misleading. Therefore, U.S. EPA should remove this database from the internet.

FBT appreciates the opportunity to provide comments on U.S. EPA's ECHO database on behalf of AK Steel.

Very truly yours,

FROST BROWN TODD LLC



Paul W. Casper, Jr.

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